CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 186.

IN THE MATTER OF MORRIS STRAUSS.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED FEBRUARY 3, 1904.

(19,229.)

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INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the second circuit	1	1
Opinion on application for certificate	1	1
Statement of facts	2	1
Questions certified	4	2
Judge's certificate	4	2
Clerk's certificate	5	3

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 22, 1904.

1 United States Circuit Court of Appeals, Second Circuit.

In the Matter of MORRIS STRAUSS.

This matter was brought to this court upon appeal by the petitioner from an order of the United States district court for the southern district of New York, dated September 16, 1902, discharging two writs of *habeas corpus* and a writ of certiorari, and remanding him to the custody of the police commissioner of the city of New York.

On the 25th of November, 1903, this court filed a decision affirming the said order of the district court. Afterwards, and on the 7th day of December, 1903, the petitioner moved the court that certain questions be certified to the Supreme Court of the United States for its determination. By these questions the petitioner seeks to present to the Supreme Court the proposition that section 5278 of the Revised Statutes and also the proceedings in Ohio charging the petitioner with crime are in contravention of article IV, section 2, sub-division 2 of the Constitution of the United States.

Under the provisions of the act of March 31, 1891, establishing the circuit courts of appeal, as interpreted by the Supreme
2 Court and by this court, we are not permitted to decide questions involving the construction or application of the Constitution or the constitutionality of any law of the United States.

U. S. *v.* Jahn, 155 U. S. 109.
Carter *v.* Roberts, 177 U. S. 496.
Cincinnati &c. Railway Co. *v.* Thiebaud, *id.*, 615.
American Sugar Co. *v.* New Orleans, 181 U. S. 277.
U. S. *v.* Lee Yen Tai, 113 Fed. Rep. 465.
Sun Publishing Ass'n *v.* Edwards, (decided by this court in March, 1903).

When these constitutional questions are presented and a certificate is requested, as now advised, we deem it our duty to grant the request irrespective of any opinion which we may entertain as to the merits of the proposition which is involved. In accordance with the practice as above indicated, we make the certificate as requested.

Statement of Facts.

The petitioner was charged by affidavit before a justice of the peace of Youngstown township, Ohio, with the crime of obtaining four hundred dollars' worth of jewelry at Youngstown, Ohio, by false pretences, contrary to the laws of that State. He was arrested as a fugitive from justice and brought before a magistrate of the city of New York August 11, 1902.

3 The governor of Ohio having duly made requisition, dated August 13, 1902, the governor of New York, after a hearing

at which the accused was represented by counsel, issued his warrant dated August 22, 1902, directed to the police commissioner of New York city, directing him to arrest the accused and deliver him to the duly accredited agent of Ohio, to be taken to that State.

The warrant recites that it has been represented by the governor of Ohio that the accused stands charged in that State of the crime of securing property by false pretences, which is a crime under the law of Ohio, and that he has fled from that State. The warrant further recites that the requisition was accompanied by affidavits and other papers, duly certified by the governor of Ohio to be authentic, charging the accused with having committed the said crime and with having fled from Ohio and taken refuge in the State of New York.

On the 29th of August a writ of *habeas corpus* to test the validity of the governor's warrant was allowed by the district court and was served on that day. The police commissioner made return to the writ that he held the accused by virtue of the governor's warrant. On September 16, 1902, the district court discharged both writs and remanded the accused to the custody of the police commissioner. The propositions presented by the questions hereafter certified were, in substance, presented by the record in the district court and in this court.

4 Upon the foregoing facts we certify the following questions of law in accordance with the provisions of section IV of the act of March 31, 1891:

First.

Whether the delivery up of an alleged fugitive from justice against whom a complaint for the crime of securing property by false pretences has been sworn to and is pending before a justice of the peace of Ohio having the jurisdiction conferred upon him by the laws of that State, is authorized in view of the provisions of article IV, section 2, sub-division 2 of the constitution.

Second.

Is section 5278 of the Revised Statutes in as far as it authorizes the delivery up of an alleged fugitive from justice upon an affidavit of complaint pending before a justice of the peace in Ohio for the crime of securing property by false pretences, which said justice of the peace has the jurisdiction conferred upon him by the laws of the said State, violative of article IV, section 2, sub-division 2 of the constitution.

Dated December 14, 1903.

E. HENRY LACOMBE,
Circuit Judge.
WM. K. TOWNSEND,
Circuit Judge.
ALFRED C. COXE,
Circuit Judge.

5 UNITED STATES OF AMERICA,
Southern District of New York.

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit do hereby certify that the foregoing certificate was filed and entered of record in my office on the 14th day of December, 1903, and as directed by the judges of said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

New York, December 15, 1903.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

6 [Endorsed:] United States circuit court of appeals, second circuit. In the matter of the petition of Morris Strauss. Certificate to U. S. Supreme Court. United States court of appeals, second circuit. Filed Dec. 14, 1903. William Parkin, clerk.

Endorsed on cover: File No. 19,229. U. S. C. C. of appeals, 2nd circuit. Term No. 186. In the matter of Morris Strauss. Filed February 3rd, 1904. File No. 19,229.